

Jerome K. Elwell, State Bar No. 012699
Robert C. Maysey, State Bar No. 024204
WARNER ANGLE HALLAM
JACKSON & FORMANEK PLC
2555 East Camelback Road, Suite 800
Phoenix, Arizona 85016
Telephone: (602) 264-7101
jelwell@warnerangle.com
rmaysey@warnerangle.com

*Attorneys for Individual and Representative Plaintiffs
Cung Le, Nathan Quarry, Jon Fitch, Luis
Javier Vazquez, Brandon Vera, and Kyle
Kingsbury*

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

In Re Subpoena Of
Top Rank, Inc. and Robert Arum

Cung Le, Nathan Quarry, and Jon Fitch, on behalf of themselves and all others similarly situated,

Plaintiffs,

V.

Zuffa, LLC, d/b/a Ultimate Fighting
Championship and UFC.

Defendant.

Case No.: 2:15-cv-01045-RFB-PAL

**PLAINTIFFS' MOTION TO
COMPEL PRODUCTION OF
DOCUMENTS RESPONSIVE TO
THEIR SUBPOENA TO THIRD
PARTY TOP RANK, INC. AND
MOTION TO COMPEL
ATTENDANCE AT DEPOSITION
OF ROBERT ARUM, PRESIDENT
OF TOP RANK, INC.**

I. INTRODUCTION

Plaintiffs submit this Motion to Compel Production of Documents Responsive to Their Subpoena to Third Party Top Rank, Inc., and Motion to Compel Attendance at Deposition of Robert Arum, President of Top Rank, Inc., and supporting Declaration of Robert C. Maysey filed in support of this motion, and a proposed form of order. This motion arises out of *Le. et. al. v. Zuffa, LLC*, case no.: 2:15-cv-01045-RFB-PAL (the “Related Case”), currently pending in this district. After extensive meet and confer

1 efforts, Plaintiffs' have been unable to resolve ongoing discovery disputes concerning Top
 2 Rank, Inc.'s document production in response to our subpoena, and Robert Arum's
 3 attendance at a deposition.

4 **II. ARGUMENT**

5 **A. Legal Standard**

7 Courts in the Ninth Circuit generally apply a three-step approach in determining
 8 whether to compel disclosure of confidential commercial information: first, the party
 9 resisting disclosure must establish that the information sought is confidential commercial
 10 information or a trade secret and that disclosure may be harmful; second, the party
 11 seeking disclosure must show the information is "relevant and necessary to the proper
 12 presentation of a claim or defense"; and third, the court then "weigh[s] the risk of
 13 disclosure of the trade secret to unauthorized parties with the risk that a protective order
 14 will impede prosecution or defense of the claims." *Capsugel Belgium NV v. Bright*
 15 *Pharma Caps, Inc.* ("Capsugel"), No. 3:15-cv-321-PK, 2015 U.S. Dist. LEXIS 130071, at
 16 *7-8 (D. Or. Sep. 28, 2015) (ordering production of trade secret documents subject to a
 17 protective order with an "attorneys' eyes only" provision) (quotations and citations
 18 omitted). "Once the moving party has established relevance and necessity, the discovery
 19 is virtually always ordered." *Id.*

20 **B. Top Rank's Aggregated Financial Information Is Relevant And
 21 Necessary To Plaintiffs' Class Action Allegations.**

22 In the Related Case, Plaintiffs allege that Zuffa exercised market power in two
 23 separate but related markets. First, Zuffa illegally acquired and maintained monopoly
 24 power in the market for promoting live professional Mixed Martial Arts ("MMA") events.
 25 *Id.* at ¶¶ 1-21). Zuffa acquired its monopoly power by acquiring its largest competitors,
 26 and by using a number of techniques to prevent other MMA promoters from competing.
 27 Zuffa locks the vast majority of top MMA fighters into long-term, exclusive contracts,
 28 which it coerces successful fighters to renegotiate before they expire, preventing these

1 fighters from seeking the greatest value for their services on the open market, and
 2 guaranteeing that other MMA promoters cannot sign top fighters. *Id.*, ¶¶ 109-115. Top
 3 fighters that can draw large audiences, boost pay-per-view sales, and drive advertising,
 4 sponsorship and merchandising revenues, are essential to success in the MMA industry.
 5 *Id.*, ¶¶ 5, 10, 58, 100, 108. By preventing the best fighters from signing with other
 6 promoters, Zuffa denies those promoters access to a critical ingredient for success. *Id.*, ¶¶
 7 108, 139. Zuffa locks the biggest advertisers and sponsors into exclusive contracts that
 8 prevent them from advertising with or sponsoring other MMA promoters, cutting off
 9 another crucial input for necessary for success in the MMA industry. *Id.*, ¶¶ 9-10, 132,
 10 167. Zuffa counterprograms other promoters live MMA events, drawing customers away
 11 from those promoters' events. *Id.*, ¶¶ 132, 150. Zuffa has broadcast contracts with some of
 12 the biggest broadcasters in the world, and prevents other MMA promoters from
 13 advertising during Zuffa's MMA broadcasts, denying them a crucial chance to reach the
 14 MMA audience. *Id.*, ¶¶ 10. Zuffa has acquired a vast library of video recordings of past
 15 MMA events, which it refuses to license to other MMA promoters. *Id.*, ¶ 75. Past video of
 16 a fighter is crucial to marketing and generating interest in that fighter's upcoming fights.
 17 By locking up these libraries, Zuffa impairs other MMA promoters' ability to promote
 18 their own fights. *Id.* Using these and other techniques, Zuffa prevents other MMA
 19 promoters from rising above the level of the "minor leagues," unable to generate
 20 sufficient broadcast, advertising or sponsorship revenue to successfully challenge Zuffa.
 21 *Id.*, ¶¶ 7, 135.

22 Because other MMA promoters cannot offer MMA fighters the money, exposure,
 23 and fame that Zuffa can, the fighters are left with no option but to sign with Zuffa, the
 24 "only game in town." *Id.*, ¶ 5. By eliminating competition among MMA promoters, Zuffa
 25 has acquired monopsony power in the market for acquiring the services of professional
 26 MMA fighters. *Id.*, ¶¶ 90-94. Zuffa exploits its monopsony power to impose restrictive
 27 contractual terms on its fighters, and to coerce them into re-signing before their prior
 28 contract expires, thereby locking them into long-term service for Zuffa and preventing

1 them from seeking the highest value for their services the way most professional athletes
 2 can since the advent of free agency. *Id.*, ¶¶ 109-115. This has the effect of suppressing the
 3 fighters' compensation. As a result, Zuffa can pay its MMA fighters a small percentage of
 4 its revenues, unlike boxing promoters such as Mr. Arum.

5 Professional MMA events are sanctioned in the U.S. by the same state athletic
 6 commissions as boxing. Nearly all athletic commissions in North America are members of
 7 the Association of Boxing Commissions ("ABC"). *Id.* at ¶ 101.
 8 Unlike MMA, however, Plaintiffs allege that boxing and the other league sports, which
 9 enjoy competitive markets, athletes generally earn more than 50% of league revenue, a
 10 significantly higher percentage of revenues than those paid to UFC Fighters. *Id.* at 103.

11 Top Rank, Inc.'s president, famed boxing promoter Bob Arum agrees that boxing is
 12 a competitive marketplace with many promotions competing for talent. Arum stated that
 13 he pays his fighters approximately 80% of the proceeds generated by a boxing event.
 14 Comparing the fighter compensation between boxing and the UFC, Arum described the
 15 disparity between the UFC and boxing as follows: "Because of the monopoly that the
 16 UFC has, they [the UFC] pay[s] their fighters maybe 20% of the proceeds that come in on
 17 a UFC fight." *Id.* at ¶ 104.¹ Arum also stated that "UFC fighters because of the UFC
 18 monopoly get stiffed. . . we pay out 80% of the revenue to the fighters. . . [the UFC]
 19 doesn't pay out 20% to the fighters. . . They are a monopoly—and we are not."

20 To enable Plaintiffs' experts to benchmark percentages of revenues generated from
 21 boxing events paid to boxers, Plaintiffs' need disclosure of full year, aggregated financial
 22 data which includes total revenues generated from the promotion of boxing events, and
 23 total compensation paid to boxers. To date, Top Rank has refused to provide this data,
 24 and instead has offered a non-representative limited sample consisting of a handful of low
 25

26
 27 ¹ See also <https://www.youtube.com/watch?v=boAcF029Dsc> (Arum: "UFC Fighters because of the UFC
 28 monopoly get stiffed. . . we pay out 80% of the revenue to the fighters. . . [the UFC] doesn't pay out 20%
 to the fighters. . . They are a monopoly—and we are not." See also
<https://www.youtube.com/watch?v=xTIJjoI6pnk&feature=youtu.be>.

1 revenue events. The financial information Plaintiffs seek from Top Rank is directly
 2 relevant to Plaintiffs' claims and information that they cannot obtain from other sources.

3 **C. Top Rank Will Suffer No Harm Because Its Confidential Commercial
 Information Is Safeguarded By The Protective Order.**

4 Courts in the Ninth Circuit have frequently ordered the production of confidential
 5 information subject to a protective order with an "attorneys' eyes only provision." See e.g.
 6 *Bare Escentuals Beauty, Inc. v. Costco Wholesale Corp.*, No. 07CV90, 2007 U.S. Dist.
 7 LEXIS 90893, at *11 (S.D. Cal. Dec. 11, 2007) (holding that where the subpoenaing party
 8 had shown the trade secret sought in discovery was relevant and necessary, the risk of
 9 disclosure was "adequately balanced" by the stipulated protective order); *Apple, Inc. v.*
 10 *Samsung Elecs. Co.*, No. C 11-1846 LHK (PSG), 2012 U.S. Dist. LEXIS 166724, at *16
 11 (N.D. Cal. Nov. 21, 2012) (ordering production of a confidential agreement and noting
 12 that "[m]any third parties to this case have had their licensing agreements disclosed —
 13 without any redaction of financial terms — subject to an Attorneys-Eyes-Only designation
 14 because the confidential financial terms were clearly relevant to the dispute"); *Capsugel,*
 15 *supra*, 2015 U.S. Dist. LEXIS 130071, at *17 (ordering production of relevant trade
 16 secrets and noting "[t]he Stipulated Protective Order provides sufficient protection against
 17 disclosure to unauthorized parties").

18 Under the Revised Stipulation and Protective Order (the "Protective Order")
 19 adopted by the court in the Related Case, any document designated HIGHLY
 20 CONFIDENTIAL – ATTORNEYS' EYSE ONLY can be shared only with outside
 21 counsel for the parties. See Dkt. 26-5 at 165 (§ 7.3). The parties themselves, including in-
 22 house counsel, are prohibited from viewing these documents.

23 Top Rank has asserted that the Protective Order does not afford adequate protection
 24 without elaborating on the objection.

25 **D. Bellator Will Not Be Subject To Undue Burden By Producing Its Event-
 Level Financial Information.**

26 When considering undue burden Courts look at whether a) the discovery is
 27 unreasonably cumulative or duplicative or can be obtained from other sources, b) the party

1 seeking discovery has had opportunities to pursue the information through discovery, and
2 c) the burden or expense of the proposed discovery outweighs its likely benefit. *Warren v.*
3 *Bastyr Univ.*, No. 2:11-cv-01800-RSL, 2013 U.S. Dist. LEXIS 50408, at *13-14 (W.D.
4 Wash. Apr. 8, 2013). Here, Plaintiffs cannot obtain Top Rank's aggregated event-level
5 financial information from any other source, and the burden to Top Rank of procuring it
6 will be minimal. Further, the Protective Order allows Top Rank to maintain the
7 confidentiality of its financial data.

8 **III. CONCLUSION**

9 For the foregoing reasons, the Court should grant Plaintiffs' Motion to Compel.

10
11 DATED: July 31, 2017.

12 WARNER ANGLE HALLAM JACKSON
13 & FORMANEK PLC
14

15 By: /s/ Robert C. Maysey
16 Robert C. Maysey
17 Attorney for Plaintiffs
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CERTIFICATE OF SERVICE

I hereby certify that on July 31, 2017, I electronically transmitted the PLAINTIFFS' MOTION TO COMPEL PRODUCTION OF DOCUMENTS RESPONSIVE TO THEIR SUBPOENA TO THIRD PARTIES TOP RANK, INC. AND APPEARANCE AT DEPOSITION OF ROBERT ARUM to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to all registered users, and also served the same by mailing a copy via certified mail on the following, who are not registered participants of the CM/ECF System:

/s/Teresa Baldridge

Teresa Baldridge, an Employee of Warner
Angle Hallam Jackson & Formanek PLC